

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Rajendra Sharma & Anr. Vs. State of Rajasthan

S.B.CR. MISC. BAIL APPLICATION NO.4827/2007

DATE OF ORDER :: December 07, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.S.W.Balchandani] for the petitioners.
Mr.P.N.Mohanani]

Mr.Ashok Upadhyaya, Public Prosecutor for the State.
Dr.Sachin Acharya, for the first informant.

BY THE COURT:

By the instant bail application under section 438 Cr.P.C., the petitioners seek anticipatory bail in FIR No.68/2007, Police Station Mahila, Udaipur for the offences under sections 498-A and 406 I.P.C.

Heard learned counsel for the parties. Carefully gone through the order impugned dt. 12.9.2007 passed by the learned Additional Sessions Judge No.2, Udaipur dismissing the bail application filed by the petitioners under section 438 Cr.P.C. as

also the police investigation diary. I have also gone through the certain papers placed on record by the petitioners.

It is contended by the learned counsel for the petitioners that the petitioners have advanced a loan of Rs.9,00,000/- to the first informant, which has not been returned and the petitioners being affluent persons, there was no occasion for them having demanded any amount as dowry. It is further contended that the dowry articles belonging to the first informant have been returned on 28.4.2006 and receipt thereof has been signed by the first informant. Learned counsel for the petitioners has placed on record the photostat copy of alleged receipt. On being asked to the learned counsel for the petitioners that where is the original receipt, he has stated that that is with the first informant. It is further contended that a flat has been purchased in the name of the first informant for which a large amount was incurred by the petitioner No.1 and according to the learned counsel for the petitioners, the first informant failed to repay the amount and has filed the case. A divorce petition has already been filed by petitioner No.1 in the Family Court, Bhopal (M.P.) seeking dissolution of his marriage with the first informant.

Learned Public Prosecutor has vehemently opposed the

bail application and contended that the police has collected the material during investigation of the case that the first informant was subjected to cruelty and harassment in connection with demand of dowry by the petitioner No.1 and the petitioner No.1 has failed to return the dowry articles.

Learned counsel appearing for the first informant submits that the alleged receipt is forged one and the learned counsel for the petitioners has made a statement in the Court today that the original receipt is with the first informant, whereas while arguing before the learned Sessions Judge, the counsel therein for the petitioners stated that the original receipt has been filed in the Family Court in a divorce petition and so far as receipt of dowry articles is concerned, it is forged one and the first informant has specifically denied her signatures on it and stated that it is concocted. It is further submitted that the petitioner No.1 has committed murder of his first wife and two children. This fact was not disclosed to the first informant at or before the marriage with her. However, learned counsel for the petitioners submits that it was not the case of the murder of wife and two children but it was abetment to commit suicide punishable under section 306 I.P.C. and on trial, the petitioner No.1 has been acquitted.

From perusal of the investigation diary and the statements

of the witnesses, it appears that certain amount has been paid by the father of the first informant to petitioner No.1. It has been alleged in the report lodged against petitioner No.1 that the first informant was serving on the post of Account Officer and drawing salary of Rs.15,000/- per month and it was petitioner No.1, who forced the first informant to give up the job and at his instance, the first informant gave up the job having eleven years service to her credit. It has further been alleged that the first informant by her own earning gave a sum of Rs. 8-9 lacs.

On careful perusal of the documents placed on record and the police investigation diary, in my view, both the parties have been levelling the allegations against each other with regard to exchange the money. The first informant also submitted that the amount was given to the petitioner No.1 and the petitioner No.1 submits that he has advanced a loan to the first informant. Learned counsel for the first informant has placed on record a communication addressed by the first informant to her counsel representing her before the Hon'ble Supreme Court stating therein that a divorce petition has been filed by the petitioner No.1 against the first informant at Bhopal and a civil suit against the property purchased by the first informant has been filed by the first informant at Bhopal and then a civil suit for recovery of Rs.2,85,320/- has been filed by the petitioner

No.1, who is husband of the first informant against the first informant at Bhopal. Learned counsel appearing for the petitioners does not dispute the fact so far as filing of the divorce petition and the civil suit filed by the petitioner No.1 against the first informant for recovery of a sum of Rs.2,85,320/-. So far as advancing loan by the petitioner No.1 to the first informant or by the first informant to the petitioner No.1 is the question to be decided in the civil suit.

From perusal of the material available on the police investigation diary, there is an evidence that the first informant was subjected to cruelty and harassment by the petitioner No.1 Rajendra Sharma in connection with demand of various amounts as mentioned in the FIR and the statement made by the first informant and other witnesses under section 161 Cr.P.C. Merely because a divorce petition has been filed and a stand has been taken by the petitioner No.1 that he has advanced the loan, even assuming that the sum has been advanced either to the first informant or her parents, it is the question of recovery in a civil suit and the petitioner No.1 has already filed a suit for such recovery, and, therefore, the amount was advanced or not yet to be determined but at any rate prima facie it cannot be said that the petitioner No.1 has not raised any demand from the first informant or her father. It is evident from the material

available on police investigation diary that a sum of Rs.50,000/- and Rs.1,00,000/- has been given to the petitioner No.1 by the sister of the first informant and her father respectively.

Keeping in view the allegations, in my view, at this stage, it cannot be said that the petitioner No.1 is not involved in the commission of crime. Looking to the gravity of the offence and the fact that the return of the dowry articles has been seriously disputed by the first informant, in my view, it is not a fit case to release the petitioner No.1 on bail under section 438 Cr.P.C.

The bail application filed by petitioner No.1 Rajendra Sharma is, therefore, dismissed.

So far as petitioner No.2 is concerned, a gift-deed has been made by the petitioner No.1 in favour of petitioner No.2 on the strength of the registered power of attorney said to have been executed by the first informant. The execution of power of attorney is not in dispute since it is the registered document and he is recipient of the gift. No overt act has been assigned to petitioner No.2. Therefore, having regard to the facts and circumstances of the case, I consider it just and proper to grant anticipatory bail to petitioner No.2.

Accordingly, the bail application filed by petitioner No.2 Lekharam under section 438 Cr.P.C. is allowed and it is directed that in the event of arrest of petitioner No.2 Lekharam s/o Data Ram Sharma in FIR No.68/2007, P.S. Mahila, Udaipur, he shall be released on bail for a period till the police concludes the investigation and files the challan provided he furnishes a personal bond in the sum of Rs.10,000/- along with one surety of like amount each to the satisfaction of Investigating Officer to surrender and appear before the trial court on the date of filing of the challan after conclusion of the investigation on the following conditions:-

- (i) That he shall make himself available for interrogation by a police officer as and when required;
- (ii) That he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer and;
- (iii) That he shall not leave India without the previous permission of the Court.

Petitioner No.2 Lekharam shall surrender before the trial court on the date of filing of the challan.

(H.R.PANWAR),J.

m.asif/-